

**Exhibit 10 to Plaintiff's
Supplemental Opposition to
Defendant Benton Express, Inc.'s
Motion for Summary Judgment**

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CASE NUMBER: 2:05-CV-194-T

HAZEL M. ROBY, as Administratrix
of the Estate of Ronald Tyrone
Roby, Deceased,

Plaintiff,

vs.

BENTON EXPRESS, INC., et al.,
Defendants.

S T I P U L A T I O N

IT IS STIPULATED AND AGREED by and
between the parties through their respective
counsel, that the videotaped deposition of
Boyd Don Hammond may be taken before Angela
Smith, RPR, CRR, at the offices of Carr,
Allison, at 100 Vestavia Parkway, Ste: 200,
Birmingham, Alabama 35216, on the 19th day
of September, 2005.

DEPOSITION OF BOYD DON HAMMOND

42643

1 instruct our drivers on how they're to
2 conduct themselves from point A to point B.
3 To follow the no-stop policy. But it's at
4 their discretion on the no-stop.

5 Q. No-stop policy meaning that if
6 somebody tries to pull up beside them and
7 get them to stop and attempt to steal the
8 cargo, don't stop?

9 A. Don't stop.

10 Q. And I think you said:
11 However, though, in their discretion, if
12 they think their safety is on the line,
13 maybe their life, maybe somebody's got a gun
14 at the window, then they have that
15 discretion?

16 A. Exactly. It's a judgment call
17 on their part.

18 Q. Do you all have any tracking
19 devices that will allow you all to track
20 your trailers or tractors in case of theft?

21 A. No.

22 Q. Do you know of any more
23 efficient way of tracking cargo trailers or

1 Sunday night?

2 A. Sunday afternoon. I believe
3 it was between four and five o'clock,
4 Central Time. I'm not sure exactly on the
5 time.

6 Q. Tell me what Garlin told
7 Mr. Craig Stephens -- what the communication
8 was about.

9 A. That Craig Stephens had called
10 and talked to Garlin, asking Garlin to take
11 his Tallahassee run because he was not going
12 to get back in time to make the Tallahassee
13 run.

14 Garlin informed him that he
15 was hooking up to the Tallahassee trailer at
16 that time. He also informed him that he
17 needed to contact Glen Clark immediately.

18 Q. And Garlin told him that?

19 A. Garlin told him to contact
20 Glen Clark immediately.

21 Q. Okay. And any more
22 information from the telephone conversation?

23 A. No.

1 Q. Did Garlin ask Craig any
2 questions, as best you all understand, about
3 what had caused -- where he was on Sunday?

4 A. No.

5 Q. Do you know why Garlin was at
6 the terminal, just to take the Tallahassee
7 run?

8 A. Go to Tallahassee.

9 Q. So, he just so happened to
10 answer the phone?

11 A. Yes.

12 Q. So, he wasn't -- It wasn't
13 generally his responsibility, he just so
14 happened, because he was going to work that
15 day, just so happened to be at the terminal?

16 A. Yes.

17 Q. And Mr. Craig Stephens, he
18 just called the terminal and just so
19 happened Garlin answered?

20 A. To my knowledge.

21 Q. And it was your understanding
22 that he called the terminal; right?

23 A. Yes.

1 reasonable amount of time, in compliance
2 with the Department of Transportation's
3 regulations.

4 Q. And that's a good key point
5 you just add. In compliance with the
6 Federal Motor Vehicle -- Well, in compliance
7 with the federal government regulations; is
8 that right?

9 A. That's correct.

10 Q. And the federal government
11 regulations require a driver to pull over
12 and stop if he's tired and sleepy and
13 fatigued?

14 MR. BROCKWELL: Object to the
15 form.

16 A. Require him to stop?

17 Q. If he was fatigued and sleepy,
18 would the regulations require that he pull
19 over and stop and get adequate rest?

20 A. He is required to get ten
21 hours of rest after being on duty no more
22 than fourteen hours, and driving no more
23 than eleven prior, and then taking a

1 ten-hour break.

2 Q. If a Benton Express driver was
3 tired and sleepy, what should he do?

4 A. If he's tired and sleepy?

5 Q. Yes. And he's delivering a
6 load and he's tired and sleepy.

7 A. Drivers are instructed to get
8 proper rest of at least ten hours prior to
9 being dispatched.

10 Q. So, if he gets tired and
11 sleepy on the job, what should he do?

12 A. I would definitely want him to
13 take a break, to drink a cup of coffee, to
14 take fifteen minutes, take thirty minutes,
15 but --

16 Q. Would it be fair to say, take
17 whatever time was adequate to make sure he's
18 not tired and sleepy when he starts back
19 driving?

20 A. I wouldn't phrase it that way,
21 no.

22 Q. Okay.

23 A. Because the driver is supposed

1 A. It would have been shortly
2 after six, yes.

3 Q. Okay. Shortly after six. He
4 would have been in a Benton Express truck?

5 A. Yes.

6 Q. He would have been pulling a
7 Benton Express -- He would have had a
8 trailer attached to the Benton Express
9 truck?

10 A. Yes.

11 Q. He would have been carrying
12 Benton Express goods?

13 A. Yes.

14 Q. To drop off at the Benton
15 Express terminal in Atlanta?

16 A. Yes.

17 Q. And he had the permission and
18 consent of Benton Express to leave Pensacola
19 with that Benton Express truck?

20 A. Yes.

21 Q. Carrying those Benton Express
22 goods?

23 A. Yes.

1 Q. And he had the consent of
2 Benton Express to pick up goods in Atlanta?

3 A. Yes.

4 Q. And he had Benton Express
5 approval to continue driving that truck once
6 he picked the goods up in Atlanta?

7 A. And to return to Pensacola.

8 Q. Yes. And he had permission
9 and consent of Benton Express to return to
10 Pensacola?

11 A. Yes.

12 Q. With those goods?

13 A. Yes.

14 Q. And is it your understanding
15 that he took a route, and that it was his
16 normal route to go from Pensacola, through
17 some back -- some fairly smaller roads, up
18 until he hit 65 North, and from 65 North to
19 Montgomery, and from Montgomery, go 85 North
20 to Atlanta?

21 A. I'm not exactly sure of the
22 route, but it was Pensacola, as direct as
23 possible, to Atlanta, Georgia.

1 A. Yes.

2 MR. BROCKWELL: Which records
3 are you referring to, if you don't mind my
4 asking?

5 MR. BOONE: His log tickets or
6 trips, or whatever you call them.

7 MR. BROCKWELL: Okay.

8 Q. And it is your understanding
9 that he did pick up a load in Atlanta?

10 A. Yes.

11 Q. And it's your understanding
12 that Mr. Craig Stephens was in a Benton
13 Express truck when he left the Atlanta
14 terminal?

15 A. Yes.

16 Q. It was your understanding, or
17 at least your belief, that when he -- that
18 the wreck occurred from -- after he --
19 sometime after he left Atlanta in
20 Montgomery?

21 A. Yes.

22 Q. And at the time the wreck
23 occurred in Montgomery, he was in a Benton

1 Express truck?

2 A. Yes.

3 Q. Carrying Benton Express goods?

4 A. Yes.

5 Q. And the route from Atlanta to
6 Montgomery, to ultimately get to Pensacola,
7 was the normal route he would take coming
8 back?

9 A. Yes.

10 Q. And he was traveling his
11 normal route in a Benton Express truck
12 carrying Benton Express goods?

13 A. Had he been within the -- his
14 time frame of returning to Pensacola, I
15 would say yes to that question, but I don't
16 know, due to the circumstances of his
17 disappearance, I have no idea where he was
18 going.

19 Q. Well, let me just ask you, was
20 his normal route from Atlanta to Montgomery?

21 A. Yes.

22 Q. And from Montgomery, he would
23 connect to 65 South?

1 A. Yes.

2 Q. And isn't it your
3 understanding that at the time of the wreck,
4 he was in Montgomery?

5 A. Yes.

6 Q. He was in the Benton Express
7 truck, as I said earlier?

8 A. Yes.

9 Q. With Benton Express goods?

10 A. Yes.

11 Q. And he was on the 85/65 South
12 Interchange?

13 A. Yes.

14 Q. And based on his normal route,
15 it appears, from everything we know, is that
16 he was on the same route he normally travels
17 back to Pensacola?

18 A. Normal route, but not in time.

19 MR. BOONE: Object as
20 nonresponsive.

21 Q. And all I'm asking you is,
22 based on everything you've seen in your
23 investigation, he was in the Benton Express

1 truck carrying Benton Express goods on his
2 way -- on his normal route back to
3 Pensacola?

4 A. He was on the route back to
5 Pensacola.

6 Q. That's all I was asking you at
7 this point. Is that correct?

8 A. Yes.

9 Q. Okay. Do you know of anybody
10 at Benton Express that -- Does he have a
11 voice mailbox, like, if you call his phone,
12 will a message be stored?

13 A. I don't know.

14 Q. You don't know. Do you have a
15 Nextel phone issued by Benton Express?

16 A. Yes.

17 Q. Does yours have a voice
18 mailbox, if I call you and you don't answer,
19 would it leave a message?

20 A. Yes.

21 Q. Do you know if anybody called
22 him and left a message?

23 A. No.

1 is that right?

2 A. That's correct.

3 Q. And at that time, on Saturday,
4 which was sometime on Saturday evening?

5 A. Yes.

6 Q. And at that time, he had no
7 thought that this truck was stolen, did he?

8 A. No.

9 Q. He was simply looking for an
10 employee?

11 A. An overdue employee.

12 Q. That's right. He was looking
13 for an overdue employee. Would you agree
14 with that?

15 A. Yes.

16 Q. He had no reason to believe
17 the truck was stolen?

18 A. No.

19 Q. And, in fact, he told the
20 police that Mr. Craig Stephens was a good
21 employee?

22 A. Yes.

23 Q. Reliable employee?

1 A. Yes.

2 Q. A family man?

3 A. Well, I'm not sure of all the
4 terminology that he used as far as family
5 man or whatever.

6 Q. But in his story he told him
7 it was an exemplary Benton Express employee?

8 A. That he was a good employee,
9 yes.

10 Q. And all he was trying to do
11 was locate him?

12 A. We're trying to find out where
13 he was at, yes.

14 Q. And you all, at that point,
15 understood and considered him an employee
16 who just was overdue and you were trying to
17 determine what the delay was?

18 MR. BROCKWELL: Object to the
19 form.

20 A. We were trying to find out the
21 location of Mr. Stephens because of being
22 overdue.

23 Q. Right.

1 A. And that's the reason the BOLO
2 was put out for three states through the
3 Florida State Highway Patrol.

4 Q. Right. And I think that's
5 what I said. Let me rephrase it. At that
6 time, on Saturday, when Mr. Glen Clark, his
7 dispatcher, who last saw him in Pensacola,
8 called the police, he was simply calling the
9 police about a good, reliable Benton Express
10 employee who had been delayed and he was
11 trying to locate him?

12 MR. BROCKWELL: Object to the
13 form.

14 A. Who was well overdue and was
15 missing.

16 Q. Right. And he had considered
17 -- And that's why he called the police?

18 A. Yes.

19 Q. Because he was looking for his
20 employee?

21 A. Yes.

22 Q. Was Benton Express -- I think
23 you told me, and we established that Benton

1 Express -- Mr. Stephens was working for
2 Benton Express, delivering a load for Benton
3 Express to Atlanta?

4 A. He was carrying the Pensacola
5 freight to Atlanta.

6 Q. That was providing a benefit
7 to Benton Express. You all were paying
8 Mr. Stephens for his work; right?

9 A. Correct.

10 Q. And Mr. Stephens was
11 performing work as a benefit to Benton
12 Express?

13 A. Yes.

14 Q. Because you all get paid?

15 A. Pardon?

16 Q. Because Benton Express gets
17 paid?

18 A. Yes.

19 Q. And he delivered that load in
20 Atlanta?

21 A. Yes.

22 Q. And Mr. Stephens had to drop a
23 load back off to Pensacola? He had to bring

1 a load from Atlanta back to Pensacola?

2 A. Yes.

3 Q. And at the time of this wreck
4 he had -- he was in that Benton Express
5 truck and he had those goods on that truck
6 in Montgomery?

7 A. Yes.

8 Q. And those goods, once received
9 -- or if received by Benton Express, are
10 goods that you all are going to distribute
11 to customers?

12 A. If received, yes.

13 Q. And you all get a benefit from
14 loads being brought back to Pensacola,
15 because you all distribute them to your
16 customers; is that correct?

17 A. That's how we stay in
18 business.

19 Q. And you all make money by that
20 business?

21 A. Yes.

22 Q. Do you know when Mr. Glen
23 Clark first found out Garlin's message?

1 hour of leaving the -- after he left
2 Pensacola he didn't respond, wouldn't that
3 alert somebody if the policy and procedure
4 was to respond in one hour?

5 MR. BROCKWELL: Object to the
6 form. Calls for speculation.

7 A. It's a predescribed run, as
8 previously said. There is no reason to
9 discuss where you're at every hour.

10 Q. I thought the reason for
11 wanting to know where the driver is at is to
12 make sure the load is going to make it and
13 on time?

14 A. He's dispatched from origin to
15 destination and from destination back to
16 origin.

17 Q. You all advertise to y'all's
18 customers: We have technology in place to
19 allow us to track our loads to ensure
20 they're on time.

21 A. Track the freight.

22 Q. Yeah. Track the freight?

23 A. Uh-huh.

1 A. Correct.

2 Q. But in this case, he was in
3 the Benton Express truck, carrying a Benton
4 Express load, on the 85/65 South Interchange
5 would be the direction he would be going to
6 get to Pensacola?

7 A. Correct.

8 Q. And you would agree with me
9 that the goods that he was carrying was in
10 that trailer?

11 A. Correct. Forty-eight hours or
12 two days late.

13 Q. And you would agree with me
14 that he had called Benton Express on Sunday?

15 A. He had called and spoke with
16 Garlin on Sunday afternoon to cover a load.

17 Q. And he had called the number
18 given to him to call when he got the report
19 -- information to Benton Express?

20 That's what he was supposed to
21 do, right, if something had happened, he had
22 been delayed, or anything happened that he
23 needed to update you on, that was at least

1 That's not consistent with trying to steal a
2 truck, is it?

3 MR. BROCKWELL: Object to the
4 form.

5 Q. Would you agree with that?

6 A. It's not consistent with
7 trying to steal a truck?

8 Q. Because if I was trying to
9 steal your truck, I wouldn't call you and
10 tell you -- and call you and try to talk to
11 you, would I? That's not normal, though, is
12 it? You would agree with that, that
13 somebody trying to steal your truck, it
14 wouldn't be consistent with me to call you
15 at the terminal?

16 MR. BROCKWELL: Object to the
17 form.

18 A. That's correct.

19 Q. And what's consistent with
20 calling an employee of Benton Express or
21 calling the terminal, is to let them know
22 what may have caused the delay or where they
23 were?

1 is.

2 A. It's the Driver's Cargo and
3 Security Policy as mandated by the
4 Department of Transportation.

5 Q. Is that something that applied
6 to -- that applied to Mr. Stephens?

7 A. Yes.

8 Q. Or is that something that
9 applied to just over-the-road haulers or
10 city drivers, too?

11 A. Both.

12 Q. Both?

13 A. Yes.

14 Q. Okay. Let me look at it for a
15 second. On page 08 -- with Bates number
16 086, I will direct your attention to the
17 next-to-the-last dot, right here
18 (indicating). Why don't you read that for
19 me.

20 A. Drivers are expected to
21 maintain regular communication with the
22 company while in transit. Any incident of
23 drivers failing to check in when required

1 shall be assumed to be suspicious and highly
2 irregular. Immediate action shall be taken
3 in such situations.

4 Q. And what's that word, drivers
5 should be in what kind of communication
6 again?

7 A. Regular communication.

8 Q. Do you know what regular
9 communication is for Mr. Stephens that you
10 say this applies to?

11 A. It says that he should be in
12 regular communication with the company while
13 in transit.

14 Q. Right. Do you know what
15 regular communication means, as it applies
16 to Mr. Stephens, which you told me this
17 document applied to?

18 A. Regular would mean if you have
19 a breakdown, you're to call in. If you're
20 involved in an accident, you're to call in
21 to the eight-hundred number.

22 Q. So, regular in your words
23 means don't call in if nothing is wrong?

1 A. Exactly.

2 Q. So, regular communication
3 means, in your opinion, don't call in unless
4 something is going wrong?

5 MR. BROCKWELL: Asked and
6 answered.

7 A. That's correct.

8 Q. Okay. Let me look at it
9 again. And this is part of a document that
10 Benton provides to its employees?

11 A. Yes.

12 Q. And its employees are supposed
13 to follow those directions?

14 A. Yes.

15 Q. And those employees include
16 yourself?

17 A. Yes.

18 Q. Mr. Glen Clark?

19 A. Yes.

20 Q. Bill Jones?

21 A. Yes.

22 Q. Craig Stephens?

23 A. Yes.